

Volume: I

Pages: 1 - 261

Exhibits: 39 - 42

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Civil Action No. 04-10718-RGS

STEVEN HORNE AND RONALD BROWN,  
Plaintiffs,

vs.

CITY OF BOSTON, SGT. ERIC BULMAN, AND SGT. JOHN  
DAVIN,  
Defendants.

DEPOSITION OF KEVIN D. FOLEY

August 26, 2005 - 9:05 a.m.

Roach & Wise, LLP

31 State Street

Boston, Massachusetts

Reporter: Donna J. Whitcomb, CSR/RPR/RMR

Kevin D. Foley

08/26/2005

Page 66

1 took?

2 A. They dealt with this but I don't honestly  
3 remember if it was specifically.4 Q. And what do you do as director of Labor  
5 Relations? I believe you said you dealt with the  
6 unions?7 A. There were a total of ten unions within  
8 the police department, both sworn and civilian, and  
9 all -- anything to do -- any labor issue gets  
10 funneled to my office whether it's a grievance,  
11 contract grievance, Unfair Labor Practice.  
12 Commanders will call me with questions on contract  
13 issues, how to interpret a contract or a particular  
14 issue in the contract.

15 Q. And that's a position you hold today?

16 A. Correct.

17 Q. Now, has your title changed from  
18 lieutenant to anything else?19 A. I went from lieutenant to deputy  
20 superintendent.

21 Q. When was that?

22 A. February of '04.

23 Q. Did you have to take an exam for that?

24 A. Negative; that's an appointment at the

Page 67

1 discretion of the police commissioner.

2 Q. And you're here as the result of a  
3 subpoena that was issued to you, correct, that your  
4 attorney accepted?

5 A. Correct.

6 Q. I'd like to show it to you and ask if  
7 that's the subpoena that was issued to you?

8 A. It appears to be.

9 MR. ROACH: I'd like to mark that,  
10 please, as Exhibit 39.11 (Document marked as Exhibit No. 39  
12 for identification.)13 Q. And looking at Exhibit 39 it indicates  
14 that you are to bring with you any documents in your  
15 personnel possession that are listed in 1 through 4,  
16 paragraphs 1 through 4 on page 2; do you see that?17 A. I could not hear you. With the door  
18 opening I couldn't hear you.19 Q. Exhibit 39 on page 2 requests you to bring  
20 some documents that are listed in four paragraphs  
21 there; do you see that?

22 A. Uh-huh.

23 Q. Is that a, "yes"?

24 A. I do.

Page 68

1 Q. Do you have any documents?

2 A. I do not.

3 Q. So that's why you didn't bring any today  
4 then?

5 A. I don't have any, no.

6 Q. Can you tell me when you were commander of  
7 the Youth Violence Strike Force from 1999 to 2003  
8 what were your responsibilities and duties? And I  
9 think you've talked about it some about having the  
10 grant money and overseeing the department and so  
11 forth, can you just tell me briefly again what your  
12 responsibilities were in that period of time?13 A. Well, we have all kind of administrative  
14 requirements that we either delegate for someone to  
15 do or in some cases do myself and then the ones that  
16 others would do, obviously, I would have to review  
17 before forwarding them up to headquarters which  
18 would include attendance records, payroll records,  
19 as I mentioned, auditing of all the grant money that  
20 I was responsible for.21 If someone was injured on duty there  
22 was an investigative report I was required to fill  
23 out with a cover letter and send it up to  
24 headquarters. Automobile accidents, same thing;

Page 69

1 there was an investigative report which was required  
2 to be filled out, cover letter attached to it and  
3 sent up.4 We had a fleet of vehicles which  
5 ultimately, you know, I was responsible for. By  
6 that I mean making sure that someone was maintaining  
7 them, servicing them, repairing them. Requisitions  
8 perhaps for equipment or supplies and then obviously  
9 the super -- responsible for everyone in the unit,  
10 but the sergeants would -- information would -- you  
11 know, I would read the arrest reports every day. I  
12 would read the ones every day -- I would read the  
13 intelligence reports every day. I would monitor,  
14 you know, people's attendance and so forth. The  
15 supervisors would critique me, if you will, every  
16 day -- not every day but --

17 Q. I'm sorry, who would critique you?

18 A. The supervisors, the sergeants.

19 Q. Would critique your job or --

20 A. I'm sorry, I would critique them but they  
21 would -- I would try on a daily basis -- obviously  
22 it wasn't done every day but sit down with them to  
23 find out what happened prior tour of duty prior day.  
24 I would sit down with detectives, not every day but

18 (Pages 66 to 69)

08/26/2005

Kevin D. Foley

Page 70

1 as often as I could, to see how they were doing, how  
2 their investigations were going; those sorts of  
3 things.

4 Q. When you said you critiqued the  
5 supervisors every day or would sit down with them  
6 and review the events of the day on a day-to-day  
7 basis, would that include the sergeants from the day  
8 and the night shifts?

9 A. Right, correct.

10 Q. Would that include Sergeant Davin and  
11 Sergeant Bulman when they were there?

12 A. It was Sergeant Detective Borman and  
13 Sergeant Detective Davin reported to me, correct.

14 Q. When you said "Borman" you meant to say  
15 "Bulman"?

16 A. Bulman.

17 Q. And you understand they're defendants in  
18 this case, correct?

19 A. I do.

20 Q. Did you sit down with the other agencies  
21 that were there from time to time, the ones that you  
22 described such as ATF, FBI, U.S. Marshal, Department  
23 of Corrections, MBTA, State Troopers, Boston Housing  
24 Police and so forth?

Page 71

1 A. I would talk to them, not every day, I've  
2 got other administer duties at headquarters and so  
3 forth but on a regular basis would be more accurate.  
4 And then I would also meet and converse, if you  
5 will, with their immediate supervisors who were not  
6 assigned to the unit but whom they reported to.

7 Q. That sounds like a very busy job.

8 A. It was.

9 Q. Can you tell me how much grant money was  
10 involved on a, say, yearly basis that you had to  
11 apply for?

12 A. I didn't apply for it. I would assist in  
13 the application but it was -- we have a strategic  
14 planning division which does all our grant  
15 applications.

16 Q. So you would assist with the Strategic  
17 Planning Division in making the applications, you'd  
18 give them the information?

19 A. Correct.

20 Q. And help them draft the grant  
21 applications?

22 A. I would provide the information, they  
23 would draft and draw it.

24 Q. How much grant money was involved on, say,

Page 72

1 a yearly basis if you can recall?

2 A. It varied to -- when the unit was first  
3 formed we had no grant money and then it actually  
4 went up to a million dollars and then towards the  
5 end started to decline. Most of these grants were  
6 for five-year periods and the ones that were renewed  
7 were renewed at considerably less, you know, and I  
8 think most of them now dried up.

9 Q. But when you were there it was a million  
10 dollars for the most part?

11 A. Correct.

12 Q. And where did this grant money come from,  
13 the federal government?

14 A. It was all federal money, yes. It was  
15 funneled through the state but it was all federal  
16 money, yes.

17 Q. I'm going to show you what's been marked  
18 as Exhibit 2 in Sergeant Bulman's deposition and  
19 point to -- the pages are not numbered but it's the  
20 fourth page in. It's an answer to Interrogatory No.  
21 6 and I'd like you to read where it says, "Beginning  
22 11 August '99" and just read that paragraph, please?

23 MR. ROACH: Off the record for a  
24 second.

Page 73

1 (Discussion off the record)

2 BY MR. ROACH:

3 Q. Have you had an opportunity now to read?

4 A. I have.

5 Q. Is that accurate, that paragraph?

6 A. Pretty much. Just the very last sentence,  
7 I believe Sergeant Bulman supervised a total of six  
8 detectives not two but...

9 Q. And this would have been -- I'm sorry, I  
10 guess there were two paragraphs. It says,  
11 "Beginning August 11, '99"; let's start with that.

12 A. Oh, okay.

13 Q. That's fine you've read that already,  
14 correct?

15 A. Yes, I have.

16 Q. And Bulman supervised six detectives  
17 rather than two?

18 A. I'm sorry, I read two paragraphs as  
19 opposed to one.

20 Q. Okay, let's start with the first  
21 paragraph, "Beginning 11 August '99." That  
22 paragraph there; is that accurate?

23 A. I believe so, yes.

24 Q. Now, I believe you said earlier, and I

19 (Pages 70 to 73)

Page 78

1 Q. And then who was under you and Sergeant  
2 Bulman in the hierarchical structure?

3 A. Well, Sergeant Bulman was the only day  
4 supervisor so then in the evening --

5 Q. Would be you, right?

6 A. I would be ultimately responsible for the  
7 shift and then there was Sergeant Gary Barker.  
8 Again, I'm not sure of the time frame that these all  
9 came but these were all night supervisors -- Gary  
10 Barker.

11 Q. Was under you?

12 A. Correct.

13 Q. He's a sergeant?

14 A. Correct.

15 Q. Who else?

16 A. I'm drawing a blank here.

17 Q. I'm just looking for your best memory. I  
18 understand --

19 A. No, I'll have to go back there. It will  
20 come to me.

21 Q. Okay, forgetting the names for a moment  
22 just can you tell me the positions?

23 A. There were three night sergeants and then  
24 obviously patrol officers on the night shift.

Page 79

1 Q. And then on the day shift it would have  
2 been Sergeant Bulman and then there were some  
3 sergeants under him?

4 A. No, there was just Sergeant Bulman  
5 initially.

6 Q. And then officers under him?

7 A. Officers. Some time later Sergeant Davin  
8 came in as the day shift supervisor. Again, I don't  
9 recall the time frame, and Sergeant Eric Bulman was  
10 promoted to sergeant detective staying in the gang  
11 overseeing the detectives on days.

12 Q. Now, where did the detectives fit in in  
13 the hierarchy when you were the night supervisor  
14 before you became the commander if you remember?

15 A. Well, detective is not a rank, it's a  
16 specialty. They have no supervisory role.

17 Q. Okay, are they in -- they have no  
18 supervisory roll over the officers?

19 A. Over patrol officers, correct.

20 Q. Who has supervisory control over them?

21 A. Well, any sergeant would but in the gang  
22 unit it would be Sergeant Bulman would be the  
23 sergeant detective overseeing the detectives on a  
24 day-to-day basis and Sergeant Davin over the

Page 80

1 uniforms on a day-to-day basis. But as sergeants,  
2 forgetting the detectives, either one of them would  
3 have authority over detectives or patrol officers.

4 Q. Okay, so when you were the night  
5 supervisor you had authority over the patrol  
6 officers and any detectives under you at night;  
7 Sergeant Bulman had supervisory authority over any  
8 patrol officers or any detectives in the day; is  
9 that a fair statement?

10 A. His responsibility was over the  
11 detectives. Because of his rank you could say his  
12 authority was over everybody working.

13 Q. Now, when you became the commander after  
14 Lieutenant French left the gang unit or the Youth  
15 Violence Strike Force in May of 2000, can you tell  
16 me what the hierarchical structure was within --  
17 strike that.

18 Before I get to that, where did the  
19 FBI, the Alcohol Firearms Tobacco and other agencies  
20 come in in terms of supervisory authority over them  
21 in the hierarchy, if at all?

22 A. Well, on a day-to-day basis they took  
23 their direction from either a sergeant or myself.

24 Q. Okay, so they were under the supervisors

Page 81

1 of the day and the evening shift; is that correct?

2 A. Right.

3 Q. Now, in 2000, May of 2000 when Lieutenant  
4 French left and you became the commander of the  
5 Youth Violence Strike Force, can you tell me what  
6 the hierarchical command structure was at that time?

7 A. Well, I switched to the day shift and I  
8 would have overall responsibility for everyone. On  
9 the detective side, Sergeant Detective Bulman was a  
10 Sergeant Detective by then; I'm sure of that. I'm  
11 not sure of the time frame but reported to me and he  
12 had six detectives working for him or under him  
13 however you want to phrase it.

14 Q. Okay, so in May of 2000 you became the  
15 commander of the entire Youth Violence Strike Force,  
16 correct?

17 A. Right.

18 Q. And then under you was the day and evening  
19 shift supervisors; is that correct?

20 A. Correct.

21 Q. And who were they when you were there?

22 A. Well, sergeant -- as I recall Sergeant  
23 Bulman had six detectives, three day, three nights  
24 and he worked the day shift. Sergeant Davin was the



08/26/2005

Kevin D. Foley

Page 82

1 only uniformed -- well, they were in plain clothes  
 2 but the only uniformed sergeant on days.  
 3 On nights we had three sergeants and  
 4 I'm drawing a blank on them, Gary Barker being one,  
 5 Michael Stratton, another -- it will come to me  
 6 during the -- I'm sure.  
 7 Q. Okay, if you remember; that's fine. So  
 8 when you became the commander of the Youth Violence  
 9 Strike Force in May of 2000 you were the commander?  
 10 A. Correct.  
 11 Q. Then under you were Davin and Bulman?  
 12 A. Correct. And then three additional  
 13 sergeants on evening.  
 14 Q. Were they of equal rank of Davin and  
 15 Bulman or were they under Davin and Bulman in terms  
 16 of --  
 17 A. Who are we talking about, the other  
 18 sergeants?  
 19 Q. Yes.  
 20 A. All sergeants are of equal rank regardless  
 21 of their shift. They all have equal rank and equal  
 22 authority.  
 23 Q. Okay, so underneath you were all the  
 24 sergeants?

Page 83

1 A. Correct.  
 2 Q. Who was under them, the officers?  
 3 A. Police officers, correct.  
 4 Q. Where do the detectives fall within the  
 5 hierarchy?  
 6 A. Again, detective is not a rank, it's a  
 7 specialty. So rank wise they are police officers,  
 8 patrolmen, so they reported on a day-to-day basis to  
 9 Sergeant Detective Bulman. But any sergeant would  
 10 have authority over them.  
 11 Q. Unless they were sergeants themselves,  
 12 right, the detectives?  
 13 A. Correct.  
 14 Q. For example, Michael Cox became a sergeant  
 15 detective, correct?  
 16 MS. TIERNEY: Objection.  
 17 Q. At some point?  
 18 A. He may have but not while he worked for  
 19 me.  
 20 Q. Let's assume somebody becomes a sergeant  
 21 detective, they're both a sergeant in rank and a  
 22 detective, correct?  
 23 A. Correct.  
 24 Q. So the sergeant is what gives them the

Page 84

1 rank in terms of hierarchy over somebody else?  
 2 A. Correct.  
 3 Q. Not the designation detective, correct?  
 4 A. Correct.  
 5 Q. Because a patrol officer could be a  
 6 detective, correct?  
 7 A. The rank is somewhat confusing but, yes.  
 8 Q. How do you become a detective?  
 9 A. It's an exam process.  
 10 Q. Is it a rank that is above a patrol  
 11 officers?  
 12 A. No, it's not a rank.  
 13 Q. What is it?  
 14 A. It's a specialty.  
 15 Q. Specialty?  
 16 A. It designates your job description as an  
 17 investigator. It has -- a detective has no  
 18 authority over a police officer. They're of equal  
 19 rank. The difference is that one works in plain  
 20 clothes and does investigations and the other is  
 21 considered a uniformed police officer. But  
 22 detective is not considered a rank or an authority.  
 23 Q. What about the officers in the Youth  
 24 Violence Strike Force, I understand they were doing

Page 85

1 investigations, correct?  
 2 A. They do limited investigations, yes.  
 3 Q. How is the investigation that the patrol  
 4 officers do limited?  
 5 A. Well, they don't investigate crimes, per  
 6 se. They can do a limited investigation to locate  
 7 an individual, they can do warrant checks, they can  
 8 do criminal history checks. They can check with  
 9 courts, probation, other agencies to perhaps get an  
 10 address. They can't do fingerprints, they can't  
 11 take fingerprints, can't dust for prints. They  
 12 can't do a follow-up investigation on a crime. They  
 13 can't have a line up, you know, an official line up.  
 14 There are other things I can't think of but --  
 15 Q. So there are some things detectives can do  
 16 and other -- that the patrol officer in the Youth  
 17 Violence Strike Force cannot?  
 18 A. Correct. Detective can do a search  
 19 warrant, a police officer cannot do one without a  
 20 detective assisting him.  
 21 Q. Detective has to sign for the search  
 22 warrant?  
 23 A. He has to oversee and review an affidavit  
 24 for a search warrant.

22 (Pages 82 to 85)

Kevin D. Foley

08/26/2005

Page 94

1 A. Again, it's a report that was prepared by  
 2 our Internal Affairs Division prior to having a pers  
 3 -- a PAM meeting.  
 4 Q. When you were there from '99 through 2003  
 5 was Paul Joyce in the Youth Violence Strike Force in  
 6 any way, shape or form?  
 7 A. He was not there when I was a commander  
 8 from '98 -- when I was there from '98 to 2000, I  
 9 don't believe. He was there when I was a commander  
 10 the first three-and-a-half years, four years.  
 11 Q. Which would have been when?  
 12 A. '92 to '96.  
 13 Q. Was he there at any time when Horne and  
 14 Brown were serving there?  
 15 A. I don't honestly remember when he got  
 16 promoted to superintendent. No, I don't believe --  
 17 well, not when I was there. I believe he was in  
 18 homicide when I was there. The second time when I  
 19 was there.  
 20 Q. Do you remember Sergeant Bulman saying  
 21 anything to you at any time when you rejoined the  
 22 Youth Violence Strike Force in '99 until the time  
 23 Brown and Horne were transferred out in 2001 about  
 24 Brown and Horne taking the place of other officers

Page 95

1 who should be there?  
 2 A. Say that one more time?  
 3 Q. Did Sergeant Bulman ever say to you that  
 4 officers other than Horne and Brown should be in the  
 5 unit because they're more qualified than they are?  
 6 A. No.  
 7 Q. Do you ever remember him saying anything  
 8 about Officer Gergory Long or Francis MacDonald as  
 9 being officers that would be better for the unit  
 10 than Horne or Brown?  
 11 A. No, I don't recognize the name MacDonald.  
 12 Q. McLaughlin, I'm sorry, McLaughlin or  
 13 Gergory Long?  
 14 A. No.  
 15 Q. So you don't remember him saying anything  
 16 to you about recommending McLaughlin or Long to be  
 17 transferred into the Youth Violence Strike Force at  
 18 any time?  
 19 A. Being transferred in?  
 20 Q. Yes.  
 21 A. Yes.  
 22 Q. What did he say about them?  
 23 A. When we -- are you ready?  
 24 Q. Yes, I'm listening.

Page 96

1 A. When we would post for openings in the  
 2 unit, in other words, when we were looking -- when  
 3 we had permission to get additional personnel or to  
 4 make changes we would post a position and anyone  
 5 throughout the city could apply for the position.  
 6 Those applications came to me. I interviewed the  
 7 individuals.  
 8 As an example, I would be told you  
 9 could take in ten officers or you could move ten or  
 10 however it came about that we would have some  
 11 movement. So I would do the interviews of all of  
 12 those people that applied. I would check their  
 13 internal affairs record to see if there was any kind  
 14 of a problem within their history.  
 15 And then the ones that impressed me,  
 16 either through their qualifications, you know, their  
 17 work from the district they came and I felt may be a  
 18 good candidate, I would sit down with all my  
 19 supervisors and would just discuss the various  
 20 individuals. If they knew something about -- you  
 21 know, I might have a stack of 15, 20 applications  
 22 that I had pulled out of probably 50 applications  
 23 that came in and we'd go over each one and ask if  
 24 they knew this one, if they knew that one.

Page 97

1 Sometimes they'd say, no, they didn't know the  
 2 individuals and sometimes they would say, yes. If  
 3 they said they knew the individual I would ask, you  
 4 know, what kind of a police officer, what kind of a  
 5 work ethic did he have and we'd have some dialogue.  
 6 I would look at their attendance  
 7 record from the unit they were presently assigned to  
 8 to see if they were abusing sick time. And we would  
 9 have a discussion and they would just give me their  
 10 opinion of all the applicants I have for the ones  
 11 that they may or may not know. And then based on  
 12 that discussion amongst all of the supervisors I  
 13 would make decisions on who came into the unit.  
 14 Q. You ultimately made the decisions on who  
 15 came into the unit?  
 16 A. I would be the one who made that decision,  
 17 yes.  
 18 Q. Did that decision have to be approved by  
 19 anybody above you?  
 20 A. All transfers in and out were obviously  
 21 approved by bureau chief.  
 22 Q. And who would that be?  
 23 A. At the time I was commander the second  
 24 time during the time period I'm sure you're talking

25 (Pages 94 to 97)

08/26/2005

Kevin D. Foley

Page 98

1 about it was Superintendent Joyce.  
 2 Q. So when you were the commander from '99,  
 3 2000 through 2003 Commander Joyce would have the  
 4 ultimate authority for any transfers in or out; is  
 5 that correct?  
 6 A. Superintendent Joyce. I would send my  
 7 recommendations up and he would either -- he would  
 8 approve them, yes.  
 9 Q. And were these in writing, the  
 10 recommendations?  
 11 A. Usually I would send a list up with a  
 12 cover letter. Yes, they'd be in writing, yeah.  
 13 Q. And did your cover letter explain any of  
 14 the reasons why you'd like certain individuals?  
 15 A. No, no.  
 16 Q. So did you give him the rank of people you  
 17 recommended, in other words, in order of preference  
 18 with the list?  
 19 A. As mentioned headquarters -- I would get  
 20 anywhere from 20 to 30, 40 applications and from  
 21 that I would send a list up of people that I would  
 22 prefer taking into the unit.  
 23 Q. But can I --  
 24 A. Did I rank them; is that what your

Page 99

1 question was?  
 2 Q. Yes.  
 3 A. No.  
 4 Q. In other words, if you had ten individuals  
 5 that you were recommending be transferred in or out?  
 6 A. Correct.  
 7 Q. You would send that list to Joyce; is that  
 8 correct?  
 9 A. Correct.  
 10 Q. And on the list did you rank your --  
 11 A. Preference?  
 12 Q. Let me finish the question.  
 13 A. Sorry.  
 14 Q. On the list of officers to be transferred  
 15 either in or out did you rank your preference in  
 16 terms of order?  
 17 A. No.  
 18 Q. Do you still have that list?  
 19 A. No.  
 20 Q. Where would that be?  
 21 A. I don't even know if I would have it.  
 22 Once I would send it up I would keep a copy until  
 23 the actual transfers took place and then I would  
 24 dispose of it.

Page 100

1 Q. When you say you dispose of it, you mean  
 2 you throw it away after the transfer took place?  
 3 A. Yes.  
 4 Q. Is that a, "yes"?  
 5 A. Yes.  
 6 Q. What did Superintendent Joyce do with your  
 7 cover letter and list?  
 8 A. I have no idea.  
 9 Q. Did you dispose of your cover letter as  
 10 well?  
 11 A. After the transfers, yes.  
 12 Q. And this would include a transfer in or  
 13 out, correct?  
 14 A. Correct.  
 15 Q. Is that right?  
 16 A. Correct.  
 17 Q. Now, this process you just told us about  
 18 you followed when you made the recommendation to  
 19 transfer Brown and Horne out of the Youth Violence  
 20 Strike Force in March of 2001 effective April 2nd of  
 21 2001, correct?  
 22 A. Right.  
 23 Q. I'd like to show you Bulman Exhibit 5.  
 24 Can you tell me what that is, please?

Page 101

1 A. It appears to be a city wide transfer  
 2 personnel order.  
 3 Q. Is that the transfer order that includes a  
 4 transfer of Brown and Horne out of the Youth  
 5 Violence Strike Force? And I'll direct your  
 6 attention to pages 1 and 3 of Exhibit 5.  
 7 A. It is.  
 8 Q. And does that transfer order also include  
 9 a transfer in of Greg Horne into the Youth Violence  
 10 Strike Force? And I direct your attention to page  
 11 4.  
 12 A. It does.  
 13 Q. And that's, again, he was part of that  
 14 same process you just described as to your  
 15 recommendations, correct?  
 16 A. Correct.  
 17 Q. And did you follow the same process with  
 18 respect to the transfer in of Frances McLaughlin to  
 19 the Youth Violence Strike Force which is note the  
 20 here on Bulman Exhibit No. 8?  
 21 A. Correct.  
 22 Q. Now, was Superintendent Joyce the  
 23 superintendent at the time that Exhibit 5, the  
 24 transfer of Brown and Horne out of the unit and

26 (Pages 98 to 101)



Page 102

1 Gregory Long in; do you see the super --  
 2 A. I honestly -- I believe so but I can't say  
 3 with certainty.  
 4 Q. Was Superintendent Joyce the  
 5 superintendent at the time that the list dated  
 6 January 4, 2002, Bulman Exhibit 8, was created when  
 7 you submitted your recommendations to him?  
 8 A. I believe so, yes.  
 9 Q. Can you think of any other superintendents  
 10 other than Joyce that would have been the  
 11 superintendent at that time?  
 12 A. No.  
 13 Q. You said you believed it was him?  
 14 A. No.  
 15 Q. Okay. Can you tell me what Joyce did  
 16 after he received the recommendations from you  
 17 either for a transfer in or a transfer out?  
 18 A. What he did?  
 19 Q. Yes.  
 20 A. I have no idea.  
 21 Q. Who had the ultimate authority to approve  
 22 your recommendation either in or out of the Youth  
 23 Violence Strike Force?  
 24 A. The ultimate would be the police

Page 103

1 commissioner.  
 2 Q. So Superintendent Joyce to your knowledge  
 3 would then submit it either to the commissioner or  
 4 somebody in between him and the commissioner; is  
 5 that correct?  
 6 A. (Pause)  
 7 Q. Your recommendations?  
 8 A. I can give you the flow. I can't say what  
 9 they did but --  
 10 Q. No, that's right. I just need the flow of  
 11 the approval process.  
 12 A. My recommendation would go to the deputy  
 13 in charge of Special Operations who -- I don't  
 14 recall. We had three deputies during the time I was  
 15 there. I'm not sure which one was -- and then he  
 16 would approve my recommendations and send them to  
 17 Superintendent Joyce and then from there they would  
 18 go to the police commissioner.  
 19 Q. And you said there was a deputy in between  
 20 you and Joyce at the time?  
 21 A. Right.  
 22 Q. Exhibits -- let me finish the question,  
 23 please. There was a deputy between you and Joyce at  
 24 the time Exhibits 5 and 8 were created?

Page 104

1 A. Correct.  
 2 Q. Do you know who that was?  
 3 A. I'm not sure. There was Robichaud and  
 4 Dowd. I'm not sure which was there at the time.  
 5 Q. Okay, it would have been either Robichaud  
 6 or Dowd?  
 7 A. Correct, or Cellucci. I'm not sure of the  
 8 time frame; those were the three deputies that --  
 9 Q. So it would have been one of those three  
 10 at the time Exhibits 5 and 8 were created; is that  
 11 correct?  
 12 A. Correct.  
 13 Q. You said you submitted a list and a cover  
 14 letter to Superintendent Joyce, did that also go to  
 15 the deputy superintendent?  
 16 A. I would submit it to the deputy, period.  
 17 It would then -- he would then submit it to Joyce.  
 18 Q. Okay, so your list and your cover letter  
 19 went to the deputy?  
 20 A. Correct.  
 21 Q. And then he submitted your cover letter  
 22 and list up to Joyce; is that correct?  
 23 A. Correct.  
 24 Q. And then Joyce would submit it to the

Page 105

1 commissioner?  
 2 A. Correct.  
 3 Q. Did you put your list or cover letter in  
 4 any file that you kept at the Youth Violence Strike  
 5 Force?  
 6 A. It would go in my pending file until such  
 7 time something happened, and then once the  
 8 transfer -- whatever the recommend -- it would go in  
 9 a pending file and then when the transfer happened  
 10 or didn't happen I would just destroy it, throw it  
 11 away. It was of no use to me after that.  
 12 Q. Okay. Now, when you say you had a pending  
 13 file, what did you use the pending file for?  
 14 A. Pending issues.  
 15 Q. And so your -- is there some rule or  
 16 regulation that governs --  
 17 A. No.  
 18 Q. -- creation of a pending file?  
 19 A. No, anything that was outstanding or  
 20 pending I would have on my desk a pending file. If  
 21 I was waiting for a report for somebody that I had  
 22 asked for it would be in that pending file. It was  
 23 just -- and then when that task was accomplished or  
 24 completed I would --

27 (Pages 102 to 105)



Kevin D. Foley

08/26/2005

Page 110

1 A. I didn't keep a copy of the payroll. That  
 2 was kept by the Special Operations commander.  
 3 Q. And the attendance file you had to keep?  
 4 A. I kept an attendance file.  
 5 Q. What about the Night Light file?  
 6 A. I kept that as well.  
 7 Q. What would you keep in that?  
 8 A. It was a combination of things. It would  
 9 include the overtime documents for the officers that  
 10 did Night Light and it would include what was  
 11 referred to as the log of what they did that night  
 12 while performing the Night Light overtime.  
 13 Q. Why did you keep that?  
 14 A. Should I be -- it was all federal funded  
 15 grant money. So in the event I -- well, for a lot  
 16 of reasons, if I was audited by the Feds on the  
 17 money I was spending, and the other was to keep  
 18 statistical information on how many Night Light  
 19 visits we made.  
 20 Q. Was the Night Light funding used, the  
 21 grant money used to pay officers like Horne, Brown  
 22 and others overtime for work they're doing other  
 23 than their regular assigned duty time?  
 24 A. All Night Light was done with the --

Page 111

1 Q. With the Youth Violence Strike Force?  
 2 A. Correct.  
 3 Q. Would you say that was an advantage of the  
 4 Youth Violence Strike Force; that you had an  
 5 opportunity to earn additional overtime with some of  
 6 these special projects like Night Light and Home  
 7 Front?  
 8 A. Actually, most officers in the gang unit  
 9 made less money than a district officer.  
 10 Q. For overtime?  
 11 A. For everything, overtime included.  
 12 Q. How was that; did their salary decrease  
 13 when you became a youth force --  
 14 A. No, the detail system -- if you're in a  
 15 district you can do details. Could not do detail --  
 16 we did not have a detail base to do. Districts have  
 17 minimum staffing, they have to put out so many  
 18 people. If they don't, vacation, sick, whatever,  
 19 they hire people. I had no minimum staffing. If  
 20 one officer showed up that's all we went up. It  
 21 never happened but I didn't have a minimum staffing  
 22 budget.  
 23 Q. But if an officer was doing a Night Light  
 24 operation and they were a day tour or a day unit

Page 112

1 officer --  
 2 A. Correct.  
 3 Q. -- like Horne and Brown, they would be  
 4 paid extra for doing the Night Light operation; is  
 5 that correct?  
 6 A. He would be paid four hours. If he were  
 7 in a district working he would be paid eight hours.  
 8 So most officers took a substantial loss of income  
 9 coming to the gang unit.  
 10 Q. Why?  
 11 A. Why did they do it or why did they take  
 12 it?  
 13 Q. Would an officer want to come to the gang  
 14 unit, the Youth Violence Strike Force, if they are  
 15 taking a pay cut for overtime and details?  
 16 A. I like to think because they really enjoy  
 17 doing that kind of work. I mean, obviously, it had  
 18 some advantages in that you had city wide  
 19 jurisdiction by -- not jurisdiction but you could go  
 20 anywhere in the city. In other words, a district  
 21 officer officially is not supposed to leave a  
 22 district.  
 23 In a gang unit you can go anywhere in  
 24 the city and not be violating any rules. You're in

Page 113

1 plain clothes you're in a unmarked police vehicle.  
 2 You did not take 911 calls, you jumped on the calls  
 3 that you chose to jump on but you weren't assigned  
 4 calls. So there was a lot of advantages other than  
 5 financial gain.  
 6 So I would say all officers in the  
 7 gang unit made less if you compared them to officers  
 8 in a district, substantially less than those who are  
 9 assigned to a district. And that, quite honestly,  
 10 was the reason that a lot of people didn't apply to  
 11 the gang unit because they would lose money.  
 12 Q. It was a unit that had some prestige  
 13 attached to it?  
 14 A. I think the officers in the unit thought  
 15 so. I think the district officers would give you a  
 16 different answer.  
 17 Q. What would they say?  
 18 A. Well, I think they were jealous that they  
 19 couldn't ride around plain clothes. So there was a  
 20 little bit of jealousy involved.  
 21 Q. For the --  
 22 A. For the uniformed police force, yes.  
 23 Q. Would be a little jealous because they  
 24 couldn't --

29 (Pages 110 to 113)

Page 122

1 transferred in?

2 A. I can recall my rationale and reasoning,  
3 yes.

4 Q. What was it?

5 A. Greg Long?

6 Q. Yes.

7 A. He applied, he presented himself very well  
8 during the interview process. In checking with the  
9 captain of his district, I believe he came from just  
10 District 3 -- yeah, he did. He came from District  
11 3. I spoke -- as I did with all the applicants that  
12 were being considered. He had an excellent  
13 recommendation from the district captain.

14 Q. Which district?

15 A. District 3.

16 Q. Okay, where is that?

17 A. It's in the Mattapan section of Boston.

18 Q. Area B-3?

19 A. Correct.

20 Q. Where is the actual station, if you know?

21 A. It's on the -- it's on -- I'm not sure  
22 what the address is. It's literally kitty-corner on  
23 the intersection of Blue Hill Avenue and Morton  
24 Street. I don't know whether they use Morton or

Page 123

1 Blue Hill Avenue for the address.

2 Q. I know where that is. Okay, so you talked  
3 to his captain, who was that?

4 A. I don't recall who was there at the time.  
5 I remember that he had just started law school.

6 Q. Anything else?

7 A. I checked his internal affairs record  
8 which was clean; by that I mean there was nothing in  
9 there that would concern me. I checked with the --  
10 we have a time clerk -- I'm not -- attendance. I'm  
11 not sure of his title but in headquarters we have  
12 somebody responsible for all the attendance  
13 information and I checked that and there was no red  
14 flag, if you will, that he abused his calling in  
15 sick before holidays, weekends; those are the things  
16 I look for.

17 Q. Anything else?

18 A. People who call in sick before their days  
19 off, after their days off on a holiday, on weekends.  
20 I do this for everybody that I interview.

21 Q. Anything else?

22 A. So I made a decision --

23 Q. I'm sorry, go ahead?

24 A. In talking to both his commander and -- at

Page 124

1 the time I knew a few people who worked in District  
2 3 and I asked them -- I don't remember their names  
3 but, again, if I know someone in a particular  
4 district I'll ask and he's got a great reputation.

5 So based on all of those I selected him.

6 Q. Did you talk to Bulman and Davin about  
7 him?

8 A. Again, at the staff meetings I would go  
9 over all the applications with all the individuals  
10 that we had so I'm sure that everybody there has  
11 either something or nothing to say.

12 Specifically Davin and Bulman, I  
13 don't recall them saying -- saying anything  
14 specific. But it would have been absolutely  
15 discussed at the supervisor's meeting, yes.

16 Q. Do you remember when the supervisors  
17 meeting was closest to when the March 23, 2001 order  
18 came out?

19 A. I have absolutely no idea.

20 Q. Now, Exhibit 5 is the March 23, 2001  
21 transfer order, correct?

22 A. It is, yes.

23 Q. How long does it take from the time you  
24 make up the list and cover letter to the

Page 125

1 superintendent that goes to the deputy, either Dowd  
2 or another -- to Joyce, up to the commissioner  
3 before the transfer order is actually issued; do you  
4 know?

5 A. It could take days, weeks or months. I  
6 mean, there is no set pattern.

7 Q. Well, looking at Exhibit 5 that's a fairly  
8 long list, isn't it; is that correct?

9 A. That is, yeah.

10 Q. I mean, compared to most transfer orders  
11 it's a pretty long one; isn't it?

12 A. I would say twice a year we have one  
13 similar to this in size. On average they're one or  
14 two pages but I would -- every six months or so  
15 you'll see one this large.

16 Q. But transfer orders come out on a very --  
17 weekly basis practically, right?

18 A. No.

19 Q. How often do they come out?

20 A. They could come out -- there is no --  
21 there was when I first came on the police department  
22 but now they come out whenever. There is no  
23 pattern.

24 Q. Okay, but do you know how often -- they

Page 126

1 come out quite a bit though, right?  
 2 MS. TIERNEY: Objection.  
 3 Q. Let me rephrase the question. How often  
 4 did transfer orders get issued?  
 5 MS. TIERNEY: Objection.  
 6 A. Personnel orders come out on a pretty  
 7 regular basis. Transfer orders come out on an  
 8 irregular basis.  
 9 Q. Can you define what you mean by  
 10 "irregular" versus "regular"?  
 11 A. I certainly can. We have a practice or a  
 12 policy, actually, if you're out injured, for  
 13 example, for 15 days you're transferred into medical  
 14 incapacitated so that would generate a personnel  
 15 order. And when you come back to full duty you're  
 16 transferred back to wherever, the district or unit  
 17 you came from. We have an average of over -- 100 to  
 18 110 people out injured on any given day so there are  
 19 -- every single week you will see personnel either  
 20 putting in medical incapacitated or coming out.  
 21 Q. And that's a transfer order, right?  
 22 A. Technically it's a transfer order. So  
 23 those you will see every week.  
 24 Q. Okay.

Page 127

1 A. And then people actually being transferred  
 2 from one place to another, not on a regular basis.  
 3 Q. And when you say not on a regular basis  
 4 what do you mean?  
 5 A. You might go literally weeks and weeks and  
 6 weeks without seeing one; then you could see one  
 7 individual on it or two or three; there's no pattern  
 8 or procedure. But to answer your question, there's  
 9 probably a personnel order on a weekly basis most of  
 10 which deal with officers going and coming from  
 11 medical.  
 12 Q. When you say personnel order, transfer  
 13 orders and personnel orders, those are basically  
 14 interchangeable?  
 15 A. Correct.  
 16 Q. In terms of the terminology, correct?  
 17 MS. TIERNEY: Objection.  
 18 A. Correct.  
 19 Q. And it could include a transfer meaning  
 20 from a permanent -- not permanent but a transfer  
 21 from one unit to another such as the the nature of  
 22 the case here or could be just out on medical and  
 23 then back, correct?  
 24 A. No, you would never see a transfer of an

Page 128

1 individual on the same order as a medical  
 2 incapacitated.  
 3 Q. Okay, so the transfer order also called  
 4 the personnel order called Exhibit 5 is not a  
 5 medical transfer?  
 6 A. Correct.  
 7 Q. These are people actually being  
 8 transferred into assignments; is that correct?  
 9 A. Correct.  
 10 Q. Now, looking at Exhibit 5, do you know how  
 11 soon before Exhibit 5 was issued that you began the  
 12 process of deciding to recommend the transfer of  
 13 Horne and Brown out of the Youth Violence Strike  
 14 Force?  
 15 A. I don't recall, no.  
 16 Q. Can you recall generally if not  
 17 specifically?  
 18 A. I made it a practice on a fairly regular  
 19 basis to re-evaluate, if you will, personnel. I  
 20 mean, if you looked at the history that was in the  
 21 gang unit, there were several transfer orders and as  
 22 exactly the time frame, I can't answer that.  
 23 Q. Do you remember when you first started  
 24 thinking about recommending that they be transferred

Page 129

1 out of the Youth Violence Strike Force; "they" being  
 2 Horne and Brown?  
 3 A. Specifically, no. And a more general  
 4 response, I would say several months prior to the  
 5 actual order coming out.  
 6 Q. Now, you said there were staff meetings?  
 7 A. I beg your pardon?  
 8 Q. Strike that. When you said several  
 9 months, how many is "several"? Can you tell me what  
 10 "several" means?  
 11 A. I don't honestly recall but I would -- I  
 12 can't guess so I would --  
 13 Q. Estimate if you could?  
 14 A. Approximately, it would probably be a  
 15 three- or four-month process from the time I started  
 16 thinking about transferring anyone to it actually  
 17 occurring.  
 18 Q. So is it fair to say that you would have  
 19 started thinking about it at least probably in  
 20 December of 2000, seeing that this is dated March --  
 21 this being Exhibit 5 -- is dated March of 2001?  
 22 A. Again, there are several individuals that  
 23 I removed from the gang unit on this order so I  
 24 suspect that that process took several months for